

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

STATEMENT OF DECISION: in respect of an application under section 17 of the Property Factors (Scotland) Act 2011 (“the Act”) and issued under the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended

Chamber Ref: FTS/HPC/PF/24/4854

Property address: Moravia Court, Market Street, Forres, IV36 1EA (“the Property”)

The Parties

Mr James Nicol, Moravia Court, Market Street, Forres, IV36 1EA (“the Homeowner”)

Newton Property Management Ltd., 87 Port Dundas Road, Glasgow, G4 0HF (“the Property Factor”)

Tribunal Members

Ms H Forbes (Legal Member)
Mr A Khan (Ordinary Member)

Decision

The First-tier Tribunal (Housing and Property Chamber) (“the Tribunal”) determined that the Factor has failed to comply with the Section 14 duty in terms of the Act in respect of compliance with paragraphs OSP3, 3.1, 3.2 and 7.2 of the Property Factor Code of Conduct (“the Code”) as required by section 14(5) of the Property Factors (Scotland) Act 2011 (“the Act”). The Tribunal determined that the Property Factor has also failed to carry out its property factor duties.

The decision is unanimous.

Background

1. By application received in the period between 22nd October 2024 and 31st January 2025, the Homeowner applied to the Tribunal for a determination on whether the Factor had failed to comply with various paragraphs of the Code, and whether the Property Factor had failed to carry out their property factor

duties. Details of the alleged failures were outlined in the Homeowner's application and associated documents.

2. The Homeowner intimated his concerns to the Factor by letter dated 14th December 2024.
3. By decision dated 24th February 2025, a Convenor on behalf of the President of the Tribunal (Housing and Property Chamber) decided to refer the application to a Tribunal for a hearing.
4. By email dated 3rd July 2025, the Homeowner lodged productions.
5. By email dated 7th July 2025, the Property Factor lodged written representations and productions.

Case Management Discussion

6. A Case Management Discussion ("CMD") took place by telephone conference on 6th August 2025. The Homeowner was in attendance and supported by Dr Eckersall. Mr Lewis Littlejohn attended on behalf of the Property Factor. The application was continued to an evidential hearing. The Tribunal issued a Direction in the following terms:

The Homeowner must lodge the following within 14 days of the issue of this Direction:

A simple document showing:

- (i) each paragraph of the Code that he alleges has been breached and each alleged failure of the Property Factor to carry out property factor duties. No new or additional breaches should be included;
- (ii) for each alleged failure a brief summary of when and how the particular failure occurred.

The Property Factor must lodge the following within 14 days of the issue of this Direction:

1. The Schedule to the Written Statement of Services that shows the authority to act.
2. Details of the handover procedure that took place upon appointment of the Property Factor.

The Property Factor must lodge the following within 21 days of the issue of the Homeowner's document mentioned at item 1 above:

- (i) A detailed response to the Homeowner's written representations, setting out the Property Factor's position in

respect of each alleged breach of the Code or failure to carry out property factor duties.

Reason for Direction

These documents will assist the Tribunal and parties at the forthcoming hearing. The Tribunal considers the Property Factor's written representations require some clarity, hence the request for a response as mentioned at item 3(i) above.

7. By email dated 19th August 2025, the Homeowner complied with the Direction.
8. By email dated 22nd August 2025, the Property Factor complied with the Direction.
9. A hearing set down for 27th January 2026 was postponed at the request of the Property Factor due to ill health.

Hearing

10. A hearing was held by video conference on 21st April 2026. The Homeowner was present and supported by Dr Eckersall. Ms Catherine Flanagan, Customer Relationship Manager, attended on behalf of the Property Factor.
11. The Legal Member explained the hearing procedure. It was agreed to follow the alleged failures as set out in the Direction response of the Homeowner dated 19th August 2025, namely paragraphs OSP3, OSP11, 3.1, 3.2, and 7.2, and property factor duties: (i) failure to comply with Deed of Conditions, (ii) failure to put the reserve/contingency fund into an interest-bearing account, and (iii) failure to take responsibility for House Managers.

Code of Conduct - The Homeowner's position

OSP 3

You must provide information in a clear and easily accessible way.

12. The Homeowner said he had been seeking back-up invoices for over two years from the Property Factor for contractors Chess ICT, Certum and EDF. He has not yet received them despite repeated requests, the last being a couple of weeks before the hearing. At a meeting in August 2025, the Property Factor's CEO had told staff to issue the invoices. The Homeowner referred to the case file (CF61), which showed an email exchange between the parties dated 24th September and 7th October 2024, where copy invoices were requested. The Homeowner said there were many emails regarding this matter within the case file. The Homeowner said he had been told by the Property Factor that invoices from these contractors covered other developments, so they could not be shared due to data protection legislation. The Homeowner said bank statements had also been requested in respect of the contingency fund, and these had not been received. The Homeowner said

there had been errors within invoices, and the Property Factor had refunded a sum of around £15,917.21 to homeowners due to these errors. The sum of £8000 is still in dispute.

OSP 11

You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure.

13. This was considered together with paragraph 7.2 below.

Paragraph 3.1

While transparency is important in the full range of services provided by a property factor, it is essential for building trust in financial matters. Homeowners should be confident that they know what they are being asked to pay for, how the charges were calculated and that no improper payment requests are included on any financial statements/bills. If a property factor does not charge for services, the sections on finance and debt recovery do not apply.

14. The Homeowner said invoices were issued with discrepancies due to duplicate entries and items for other developments (CF104). The discrepancies were discovered by the homeowners. The phone lines were disconnected for five weeks. The Careline system was disconnected, and several homeowners in the retirement development suffered falls and could not contact Careline. The homeowners chased up invoices for these services and discovered the errors and that the Property Factor had tried to pass on payment interest to homeowners. The Homeowner said one invoice was for a completely different development.

Paragraph 3.2

The overriding objectives of this section are to ensure property factors:

- *protect homeowners' funds;*
- *provide clarity and transparency for homeowners in all accounting procedures undertaken by the property factor;*
- *make a clear distinction between homeowners' funds, for example a sinking or reserve fund, payment for works in advance or a float or deposit and a property factor's own funds and fee income.*

15. The Homeowner said the Property Factor had received £103,000 in contingency funds from the previous factor. The Property Factor failed to put the funds into an interest-bearing account as required by paragraph g) of section C of the Written Statement of Services ("WSS") (CF154) and paragraph 2.3.13 of the Deed of Conditions ("DOC") (CF192). The Homeowner said he had been told at the meeting in August 2025 that the funds would be transferred to an interest-bearing account, but this never happened. The funds were eventually transferred to the new property factor

and put into an interest-bearing account. The Homeowner said he had calculated that over £3000 was lost in interest. There had been a dispute over whether the fund was a properly authorised contingency fund, and the Property Factor had said it was not properly authorised. There had also been discussion as to the proper description of the fund. The Homeowner submitted that 'contingency fund', 'sink fund' and 'reserve fund' were all descriptions of the same thing.

Paragraph 7.2

When a property factor's in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed in writing.

16. The Homeowner said the Property Factor had failed to comply with their complaints procedure. They had not answered all of his queries regarding the invoices and the reserve fund, and had failed to resolve the complaint despite the complaint beginning in April 2024. The Homeowner said this was pertinent to OSP 11.

Code of Conduct - The Property Factor's position

OSP 3

17. Ms Flanagan said there had been issues with the three companies mentioned by the Homeowner. The companies were not issuing invoices for the majority of developments. Invoicing was sporadic, there was back-billing, and late payment charges. There were no individual invoices for developments, and charges had to be attributed manually from a spreadsheet. This led to errors. The Property Factor refunded charges to homeowners when they became aware of errors. Ms Flanagan said she had tried to get invoices from the companies. She was separating out the relevant information and sending it to the Homeowner. Ms Flanagan said she believed information had been provided to the Homeowner as far as possible.
18. Ms Flanagan said EDF bills had been provided when they were available. The Property Factor could not provide something that they did not have. Ms Flanagan said she believed the Homeowner had been informed when something was not available.
19. Responding to questions from the Tribunal, Ms Flanagan said she does not do the invoices. The sums are contained in a spreadsheet as line items. Ms Flanagan said she was unable to comment on why the Homeowner had been told he could not get information due to data protection. Ms Flanagan said she had not been party to any information from the leadership team. She had hoped Mr Laurie would be in attendance at the hearing, but he was on annual leave, which had been booked before the hearing was scheduled.
20. Responding to questions from the Tribunal, Ms Flanagan said there were no bank statements available, as the funds had not been put into a separate

bank account. This was due to the fact that there were a limited amount of accounts available to the Property Factor by their bank. The funds were in the in-client account for the development, but they were separate from the company funds.

Paragraph 3.1

21. Ms Flanagan said the Property Factor admitted that there were errors in homeowners' invoices. This was due to manual processing from the multi-development spreadsheets provided. This led to charges being made to the wrong developments. The errors were corrected and sums refunded whenever the Property Factor was advised. Ms Flanagan said the Property Factor now has a two-stage process for billing, with a final check by a property manager. Ms Flanagan said she could not confirm that the sum of £15,917.21 was the total that was refunded to homeowners due to errors. Asked whether the staff receive training to avoid such errors, Ms Flanagan said there is induction training and a buddy scheme. There is also online training for staff. Ms Flanagan said the issues had also occurred with invoicing at other developments. Staff had not paid enough attention when keying in sums.

Paragraph 3.2

22. Ms Flanagan pointed out that the WSS states that correctly authorised sinking funds will be put in an interest-bearing account 'if possible'. The Property Factor's bank puts a limit on the number of individual accounts that can be opened. Asked by the Tribunal about the definition issue that had been raised previously in respect of the nature of the funds, Ms Flanagan said the Property Factor did not initially deem the funds a sinking fund. It was their position that the fund must be named as a sinking fund and that this was a contingency fund, rather than a sinking fund. When the Property Factor accepted that it was a sinking fund, they discovered there were no additional bank accounts available to them. Asked whether the Property Factor was wrong in their determination regarding the definition, Ms Flanagan said she could not answer that. She was not sure if Mr Gracie had made an executive decision to deem the fund a sinking fund to assist homeowners. Asked what factors might determine whether it was possible to put the funds into an interest-bearing account, Ms Flanagan said this would include matters such as whether the bank allowed it. There may be management reasons if the fund was not as easy to manage. Ms Flanagan said she was not party to executive-level decisions.

23. Ms Flanagan said the Property Factor had not disputed that the fund was a contingency fund. The Property Factor had inherited the fund. It was not part of their services, and there was no agreement with the homeowners that a sink fund would be managed. There had been discussion about the services at the time of invitation to tender.

24. Responding to questions from the Tribunal as to why the Property Factor did not comply with the requirement in the Deed of Conditions to put the

contingency fund into an interest-bearing account, Ms Flanagan said the Property Factor does not believe they are required to comply with the Deed of Conditions. Asked whether the homeowners had been informed that the funds could not be put into an interest-bearing account, Ms Flanagan said she did not know. That was one of the reasons the Property Factor had resigned, as they could not deliver the service required by the homeowners.

25. Ms Flanagan said she had had a discussion with Mr Goldie, the Chief Executive, during the hearing break, and he had undertaken to calculate the amount of lost interest on the contingency fund and make payment to homeowners.

Paragraph 7.2

26. Ms Flanagan said she understood there had been a meeting between the Homeowner and Mr Goldie and Mr Littlejohn, at which time the Homeowner was informed that the complaints process had been exhausted. The Homeowner was not happy with that decision. The decision was not put in writing.
27. Referring to OSP11, Ms Flanagan said the Property Factor believed they had responded to complaints within a reasonable time with the information requested. If staff were not on leave, the Property Factor always responded within the relevant timescale.

Homeowner response

28. The Homeowner said there were errors in the invoices month after month, then overdue debt letters started to arrive. Some of the residents of the development are elderly, and they were terrified that debt collectors would visit them. The Homeowner said if he had not gone through the invoices and spotted the errors, no one else would have done so. The Homeowner said this was the first retirement complex the Property Factor had managed, which probably accounted for their mistakes.
29. The Homeowner pointed out that the Property Factor had stated at the CMD that the fund was not a properly constituted contingency fund. Homeowners had never been notified that the funds would not be put into an interest-bearing account. The Homeowner said he appreciated the offer of interest to be paid on the fund.

Property Factor Duties

The Homeowner's position

Deed of Conditions

30. The Homeowner submitted that the Property Factor is required to comply with the Deed of Conditions in accordance with the Title Conditions (Scotland) Act 2003 and the Property Factor (Scotland) Act 2011. The Property Factor had

been provided with a copy of the Deed of Conditions at appointment, and they did not raise any issues until the Property Factor set out their position eleven months later (CF76). Homeowners had been told at the Property Factor's presentation that they would continue to do everything the previous factor had done, only cheaper.

Contingency Fund

31. No further evidence was heard in this regard, as it had been previously fully covered as set out above.

House Managers

32. The Homeowner said it had been expected that the Property Factor would take responsibility for managing the House Managers, but this did not happen. This led to continuous problems throughout the period of appointment.

Evidence of Mr Terence Smith

33. Mr Terence Reid Smith gave evidence as a witness for the Homeowner. Mr Reid is a Development Manager at the development. He has been self-employed since 2018. Prior to that, he was employed by the previous property factor.
34. Mr Smith said the Property Factor had been invited to the handover from the previous factor but they did not attend. There was no official handover. Mr Reid said there was a procedure for handover in the Code of Practice for Retirement Home Managers, which is no longer in force.
35. Mr Smith said the previous factor had wanted to TUPE the House Managers to the new Property Factor, but the Property Factor would not agree. They suggested the employees be transferred under TUPE legislation to a cleaning company, but the previous factor would not agree to that. The House Managers were made redundant by the previous factor, and a private company, Moravia Management Services, was set up with a local businessman as director. Mr Smith said he was paid by invoicing the Property Factor, in effect being treated like a contractor. Payments were always late. Otherwise, the work continued as before. The homeowners had been involved in discussions and had agreed to this set-up. Mr Smith said he expected regular meetings with the Property Factor, but there was only one meeting with the director in the Inverness office. The Property Factor had said they would come and check paperwork for the House Managers, but that never happened. It was his position that the Property Factor had no experience of retirement complexes.
36. Under cross-examination by Ms Flanagan, Mr Smith was asked if he thought the Property Factor had taken over the whole business of the previous factor, and if that was why he had expected TUPE would apply. Mr Smith said the House Managers had only been told they would be transferred to the Property

Factor. Mr Smith said he was aware the Property Factor was appointed by the homeowners.

The Property Factor's position

Deed of Conditions

37. Ms Flanagan said the Property Factor's agreement with the homeowners is set out in the WSS. This falls in line with the Code. The Property Factor could not work to every different Deed of Conditions within each development. The burdens within the deed belong with the homeowners. The Property Factor is not an owner. Ms Flanagan said this is the stance of their Chair. Asked whether the Property Factor has taken legal advice on this, Ms Flanagan said she had been told they have done so multiple times, but she does not have access to the legal opinions. Asked whether the Deed of Conditions would form part of the tendering process, Ms Flanagan said that would not be normal. Nor would it be normal to have a handover process. All the work had been done previously. Ms Flanagan said she thought it was expected that the Property Factor would attend the handover. She was unaware of why that had not happened.

House Managers

38. Ms Flanagan said the Property Factor had been very specific about the staff management and TUPE. The Property Factor does not employ House Managers, and that was accepted by the homeowners.
39. Ms Flanagan said there was no transfer of assets. There was no agreement to take on the House Managers. Abbey Cleaning had said the employees could TUPE to them, but the homeowners decided to set up their own company. The homeowners wanted to set the hourly pay themselves. Everyone was in agreement about this prior to the Property Factor taking over. Asked whether there was any obligation in law to TUPE employees in this type of situation, Ms Flanagan said there was not. It would be different if they were taking over another factoring company with employees.
40. Ms Flanagan described the typical takeover process, which involves discussions with homeowners before tendering. There are usually emails and meetings between development managers and homeowners. The new factor and the homeowners would meet on handover day.

Response from Homeowner

41. The Homeowner said the Property Factor is bound by the Deed of Conditions as Managing Agent. The Homeowner said the Property Factor had no idea how to manage a retirement complex and was unable to answer questions as to the role of House Managers. The issue was not that the Property Factor did not employ the House Managers, but that they did not manage them. The homeowners expected the Property Factor to manage the staff, as they were paying a management fee.

42. The complex was without a care system for 5 weeks after the Property Factor took over. The Property Factor had said they would negotiate a rate for electricity, but that never happened.

Summing up by the Homeowner

43. The Homeowner said the Deed of Conditions creates real burdens that run with the land and bind current and future owners. The duties of the Managing Agent flow from the Deed of Conditions. The 2003 Act provides a framework. Section 54 governs the provision of facilities and the governance of funds. The 2011 Act adds statutory duties, including complaint handling. The Homeowner submitted that the Tribunal should ask for caselaw and authorities in respect of the Property Factor's position.

Summing up on behalf of the Property Factor

44. Ms Flanagan said the Property Factor felt they had no option but to terminate the contract as they could not meet the expectations of the homeowners. Ms Flanagan said the Property Factor has been upfront. It is not the case that they did not meet with the Homeowner. There were multiple communications, including frequent phone calls.

Findings in Fact

- 45.
- i. The Homeowner is the proprietor of the Property, which is situated within a retirement complex.
 - ii. A Deed of Conditions in respect of the complex was registered on 17th September 2007 by McCarthy & Stone (Developments) Limited.
 - iii. The Property Factor acted as Managing Agent for the homeowners in relation to the complex from 1st September 2023.
 - iv. A contingency fund of £103,000 was transferred from the previous factor to the Property Factor.
 - v. A private company was set up by homeowners to employ the House Managers after handover.
 - vi. The Property Factor failed to transfer the telephone lines and electricity account at the commencement of factoring the complex.
 - vii. The Property Factor failed to engage in the installation of a new care system.
 - viii. The Property Factor failed to provide information in a clear and easily accessible way by providing incorrect information to the Homeowner in respect of sums due.

- ix. The Property Factor provided inaccurate invoices to the Homeowner, including duplicate entries and sums due by other developments.
- x. The Property Factor was required to credit a sum of approximately £15,917.21 to the homeowners due to incorrect invoicing.
- xi. The Property Factor failed to protect the Homeowner's funds by placing the contingency fund into an interest-bearing account in line with the requirements of the Deed of Conditions.
- xii. The Property Factor failed to comply with the Deed of Conditions by choosing only to comply with certain provisions.
- xiii. The Property Factor failed to comply with the Deed of Conditions by failing to supervise the House Managers.
- xiv. On 23rd April 2024, the Homeowner made a formal complaint to the Property Factor.
- xv. On 19th June 2024, the complaint was escalated to stage 2 of the complaints procedure.
- xvi. On 16th July 2024, a homeowner emailed the CEO of the Property Factor to chase up a response to the complaint.
- xvii. A meeting was held between homeowners and the Property Factor on 21st August 2024.
- xviii. By email dated 8th October 2024, the Homeowner informed the Property Factor of his intention to apply to the Tribunal.
- xix. By email dated 9th October 2024, the Property Factor indicated that they could not provide the service homeowners were looking for.
- xx. The Property Factor informed residents of their resignation on 16th October 2024 and ceased providing services to the complex on 8th January 2025.

Determination and Reasons for Decision

- 46. The Tribunal took account of all the documentation provided by parties and their written and oral submissions.

Failure to comply with Paragraph OSP3

- 47. The Tribunal found that the Property Factor had failed to comply with this paragraph of the Code by failing to provide information in a clear and easily accessible way. The Property Factor admitted errors by its staff in transcribing

information from spreadsheets to invoices. This resulted in a sum of £15,917.21 having to be credited back to homeowners.

48. The alleged failure to provide copy invoices did not appear to fall within this paragraph of the Code.

Failure to comply with Paragraph OSP11

49. The Tribunal did not find that the Property Factor had failed to comply with this paragraph. The Homeowner complained that the Property Factor had not answered all of his queries regarding invoices and the reserve fund and had failed to resolve the complaint. These complaints did not appear to fall within this paragraph.

Failure to comply with Paragraph 3.1

50. The Tribunal found that the Factor had failed to comply with this paragraph by failing to calculate charges correctly and including improper payment requests on bills. The Homeowner could not possibly have confidence that he knew what he was being asked to pay for. Indeed, it fell to the Homeowner to investigate the sums being invoiced, which resulted in a discovery that the Property Factor had wrongly charged £15,917.21 to homeowners.

Failure to comply with paragraph 3.2

51. The Tribunal considered that the Property Factor had failed to comply with this paragraph by failing to provide clarity and transparency in accounting procedures, given the level of errors in the accounts. The Tribunal did not find that the paragraph had been breached by the Property Factor's failure to provide a statement for the contingency fund. The contingency fund was not held in a separate account; therefore, no statement could be provided. This matter is dealt with under property factor duties.

Failure to comply with Section 7.2 of the Code

52. The Tribunal found that the Factor failed to comply with this section of the Code as no final decision was confirmed to the Homeowner in writing with the required information.

Property factor duties

Deed of Conditions

53. The Tribunal found that the Property Factor had failed in carrying out their property factor duties by failing to comply with the Deed of Conditions. The Deed of Conditions provides the basis for the powers and duties of the Managing Agent. It is not open to a property factor to pick and choose which duties within the Deed they will comply with. The correct procedure would be for a factor to examine the Deed of Conditions before agreeing to the appointment, in order to ensure compliance will not be an issue. The Property

Factor provided no authority for their position that a Deed of Conditions does not bind them.

Contingency Fund

54. The Tribunal found that the Property Factor failed in carrying out their Property Factor duties by failing to place the contingency fund into an interest-bearing account, as required by the Deed of Conditions. This would have been considered under the Code had the Homeowner continued to insist on a failure to comply with paragraph 3.12. This was not included in the Homeowner's updated list of failures.

House Managers

55. The Tribunal found that the Property Factor failed in carrying out their Property Factor duties by failing to be responsible for supervision of the House Managers as required by the Deed of Conditions.

Observations

56. The Tribunal considered the Property Factor's omissions in relation to the invoicing to be particularly serious. It seemed that, had the Homeowner not undertaken to investigate the invoices, the errors may not have been uncovered, and residents would have been significantly out of pocket. The fact that debt letters were being sent to vulnerable residents when the fault was that of the Property Factor was especially concerning.

Proposed Property Factor Enforcement Order (PFEO)

57. Having determined that the Factor has failed to comply with the Code, the Tribunal was required to decide whether to make a PFEO. The Tribunal decided to make a PFEO.

58. In considering the terms of the PFEO, the Tribunal took into account the distress, frustration and inconvenience caused to the Homeowner by the Factor's failure to comply with the Code.

59. Section 19 of the Act requires the Tribunal to give notice of any proposed PFEO to the Property Factor and allow parties an opportunity to make representations.

60. A proposed PFEO accompanies this decision. Comments may be made in respect of the proposed PFEO within 14 days of receipt by the parties in terms of section 19(2) of the 2011 Act.

Right of Appeal

61. In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That

party must seek permission to appeal within 30 days of the date the decision was sent to them.

Legal Member and Chairperson

11th May 2026